

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM.**

Complaint No.: 4174 of 2024

Date of Decision: 11.09.2026

1. Vishal Taneja son of Sh. Suraj Parkash Taneja, 2. Vaishali Taneja wife of Sh. Vishal Taneja, residents of K-40, Ground Floor, Kailash Colony, New Delhi, 110048.

.....Complainants.

Versus

Almond Infra-build Private Limited, registered office address 711/92, Deepali, Nehru Place, New Delhi, 110019.

.....Respondent.

APPEARANCE

For Complainants: Mr. Kunal Jain, Advocate.
For Respondent: Ms. Shivani Dang, Advocate.

ORDER

This is a complaint filed by Mr. Vishal Taneja and Mrs. Vaishali Taneja (allottees), under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in brief "The Act of 2016") against M/s Almond Infra-build Pvt. Ltd. (promoter/developer).


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2. Briefly stated, according to the complainants, believing upon the assurances and promises made by the agent/representative of the respondent, they (complainants) booked a Flat bearing no. C-3183, Tower no. 3, 18th Floor, ad-measuring 2150 sq. ft. super area (1797 sq. ft. in Carpet Area) in the project "ATS Tourmaline" Sector-109B, Gurugram, being developed & constructed by the respondent, against a total consideration of Rs.1,81,11,250/- on 24.03.2014. An Apartment Buyer Agreement (ABA) was executed between the parties on 24.03.2014.

3. That the complainants then secured/is sanctioned a loan of Rs.1,37,00,000/- from HDFC Bank and a Tripartite Agreement between HDFC Bank, complainants and respondent, was executed on 14.04.2014. The complainants have paid the entire sales consideration as per the demand and requirements of the respondent. In this way, complainant has paid a total sum of Rs.1,81,11,250/-.

4. That the said purchase was made under the "Subvention Scheme" floated by the respondent. The complainants were assured in writing vide said Tripartite Agreement, that for 36

months from the disbursement of the said loan, the liability of provision of the Pre-EMI/EMI chargeable of loan disbursed to HDFC Bank, shall exclusively be that of the respondent.

5. That the respondent has miserably failed to handover physical possession of the flat as agreed by the respondent within a stipulated time period from the date of booking. The respondent did not adjust the penalty charges for the delayed possession for the commercial unit as per agreed terms and conditions. There is gross deficiency in service in the matter of allotment/possession of unit/ total sale consideration of the residential unit and the deficiency got further compounded by the respondent by further defaulting on its promises.

6. That as per assurance given by the officials of the respondent, the physical possession of the said flat was supposed to be handed over to the complainants by 24.09.2017 from the date of booking. Thereafter the respondent sent to the complainants an Offer of Possession on 09.08.2019 stating that it (respondent) had received Occupancy Certificate from the Statutory Authorities and that the complainants should take the possession of the said flat by paying a demanded amount of Rs.1,97,500/- all inclusive.


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7. That in compliance of said demand, complainants paid a cumulative amount totalling to Rs.1,97,500/- to the respondent under protest. Till date, complainants have been constrained to spend around Rs.20,00,000/- in completing said apartment on the respondent's behalf.

8. That furthermore the complainants had been demanding to get the Conveyance Deed registered for said Apartment as per norms and law from the respondent. Finally, after repeated requests, the respondent executed Conveyance Deed in favour of the complainants on 16.01.2023.

9. Citing facts as described above, the complainants have sought following reliefs: -

- a. to direct the respondent to refund of the extra amount paid by the complainant towards loss of area (i.e. Rs.45,35,372/-) in respect of the above said unit/space along with interest @ 11% per annum from the date of deposit/BBA till the realization of the amount, amounting to a total of around Rs.96,00,000/- till 09.08.2024;
- b. to direct the respondent to make the payment of Rs.20,00,000/- towards renovation expenses of the said unit that were expensed by the complainant as the respondent builder did not discharge their liability as per BBA;
- c. to direct the respondent to make the payment of Rs.5,00,000/- towards litigation charges;

- d. to direct the respondent to make the payment of Rs.10,00,000/- towards mental agony and harassment;
- e. to pass any other or further order which this forum may deem fit and proper on the facts and circumstances of the case.

10. The respondent contested the claim of complainants by filing a written reply. It is averred that the present complaint has been filed by the complainants on the basis of liberty granted to complainant no. 1 by the Authority in his previously instituted complaint no. 898 of 2023. However, no such complaint was filed by complainant no. 1. Even otherwise the complaint previously filed before the Authority was only by complainant no. 1. The complainant no. 2 has no cause of action to file present complaint.

11. That this complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute as per Clause 21.1 of the ABA. The complainants have not approached this Forum with clean hands and have intentionally suppressed and concealed the material facts in the present complaint.

12. That the respondent vide its letter dated 08.12.2017 had raised payment demand towards Haryana Value Added Tax

(HVAT) for Rs.1,80,128/-. The complainants failed to make the entire payment and the respondent was constrained to send a reminder dated 09.08.2019 to the complainants.

13. That the respondent completed the construction of the unit and applied for grant of Occupation Certificate on 19.03.2018. The OC has been was granted by the concerned authorities on 09.08.2019. The respondent has already offered possession of subject unit to the complainants vide Notice of Possession dated 09.08.2019. It (respondent) had demanded the instalment for the net payable amount of Rs.1,65,793/- due on offer of possession, which was to be paid on or before 30.08.2019.

14. That since there was no delay on the part of the respondent, the complainants never raised any demand for delayed possession charges or on account of any other thing. The complainants approached the respondent to hand over the unit after physically verifying the unit in all respects and being fully satisfied with the unit as well as the tower in which the unit was situated, the complainants obtained the actual, physical possession of the said unit from the respondent on 23.04.2022. No objection regarding alleged reduction in the area of the said unit was ever


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raised by the complainants. Not only this, being fully satisfied, the complainants also executed certificate of possession dated 23.04.2022, Indemnity Cum Undertaking and discharge-cum-no dues certificate.

15. Contending all this, the respondent has prayed to dismiss the complaint.

16. Both parties filed affidavits in support of their claims. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

17. Admittedly, Vishal Taneja (complainant No.1) approached the Haryana Real Estate Regulatory Authority (Authority) by filing a complaint No.926 of 2023, which has been decided by the Authority vide order dated 09.08.2024. According to the respondent, the present complaint is not maintainable as the Authority while deciding aforesaid complaint allowed only complainant No.1 (Vishal Taneja) to approach this forum seeking compensation and not both of complainants.

18. The unit in question was allotted in favour of both the complainants and not only in favour of complainant No.1 (Vishal Taneja). In this way, complainant No.2 (Ms. Vaishali Taneja) being

co-allottee is also equally entitled to seek compensation. It is not of much importance that the Authority passed said order in favour of complainant No.1 only.

19. The other plea of the respondent about maintainability of the present complaint is that when the parties had agreed to resolve their dispute through an Arbitrator by inserting an Arbitration Clause, the complainants could not have approached this forum, through complaint in hands.

20. Even if there was such an Arbitration Clause, the complainants cannot be restrained from exercising their rights granted by Act of 2016. Even otherwise, this plea did not find favour of the Authority, which allowed earlier complaint of same complainants. In the absence of filing of any appeal etc., said order has become final. I do not find any merit in this plea of the respondent.

21. Copy of agreement for sale i.e. BBA as well as Conveyance Deed executed between the parties have been put on the file. Genuineness of the same is not disputed on behalf of any of the parties during deliberations. According to these, the complainants were allotted subject unit i.e. apartment bearing


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No.C-3183 at 18th floor, Tower-3 having super built-up area of 199.74 sq. mt. equivalent to 2150 sq. ft. which included built up area of 166.94 sq. mt. equivalent to 1797 sq. ft. Conveyance Deed also mentions same area of the subject unit i.e. 199.74 sq. mt. or 2150 sq. ft. as super area. The Authority while deciding afore stated complaint came to conclusion that super area as mentioned at the time of execution of agreement was 2150 sq. ft. which is exactly same as was mentioned in Conveyance Deed. On the contrary, carpet area was mentioned to be 1797 sq. ft. at the time of agreement, which is reduced to 1347 sq. ft. at the time of Conveyance Deed. Observing all this, the Authority was of the view that there has been reduction in the build-up area of the unit. Stating so, the complainants were given an opportunity to seek compensation for the reduced built-up area before Adjudicating Officer. At the cost of repetition, it is mentioned that said order has become final as none of parties challenged said order in appeal etc. The complainants are thus entitled for compensation for having been given reduced area.

22. The complainants have sought refund of extra amount paid by them i.e. Rs.45,35,372/- as loss of area along with interest

at the rate of 11% per annum from the date of deposit till realization of the amount. According to them, total amount paid by them till 09.08.2024 was 96 lakhs. The respondent is thus directed to refund the extra amount received by the same as compensation in respect of less area i.e. 450 sq. ft. at the same rate as was received by it from complainants, along with interest @ 11% per annum from the date of payment by the complainants till amount is realized.

23. The complainants have also prayed for payment of Rs.20 lakhs towards renovation expenses of subject unit. Even if the complainants spent any amount to renovate their unit, it is not proved on file that work done by the complainants was liability of respondent to do, as per BBA. There appears no reason for any compensation in this regard. Request in this regard is declined.

24. The complainants have further prayed for payment of Rs.5 lakhs towards litigation charges. No court fee is prescribed to be paid to the Authority, while filing such a complaint. Even then, it is apparent that the complainants were represented by an Advocate during the proceedings of this case, same(complainants) are allowed a sum of Rs.50,000/- as litigation expenses.

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25. The complainants have further prayed for Rs.10 lakhs as compensation towards mental agony and harassment. Apparently, when the complainants were not given the same area, which was agreed by the respondent, all this caused mental agony and harassment to the allottees/complainants. The amount of Rs.10 lakhs is highly excessive. The complainants are allowed a sum of Rs. One lakh for mental agony and harassment.

26. The respondent is directed to pay said amounts of compensation within one month of this order, failing which the respondent will be liable to pay entire amount along with interest at the rate of 11% per annum till realization of amount.

27. This complaint stands disposed of accordingly. File be consigned to the record room.

Announced in open court today i.e. on **11.09.2026**.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority,
Gurugram.

Present: Mr. Kunal Jain, Advocate for the complainants.
Ms. Shivani Dang, Advocate for the respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
11.09.2026